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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 ANDREW M. FLORES,
12 Petitioner,
13 v.
14 WARDEN MARTINEZ, *et al.*,
15 Respondents.

Case No. C06-5114RBL
REPORT AND
RECOMMENDATION TO DENY
APPLICATION TO PROCEED
IN FORMA PAUPERIS

Noted for May 5, 2006

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17 This case has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. §
18 636(b)(1) and Local MJR 3 and 4. Petitioner is an inmate at the Florence Correctional Center, located at
19 Florence, Arizona. He has filed a petition for writ of *habeas corpus* pursuant to 28 U.S.C. § 2254 and an
20 application to proceed *in forma pauperis*. (Dkt. #1). Because petitioner appears to have sufficient funds
21 with which to pay the \$5.00 court filing fee, the undersigned recommends the court deny the application.

22 DISCUSSION

23 The district court may permit indigent litigants to proceed *in forma pauperis* upon completion of a
24 proper affidavit of indigency. *See* 28 U.S.C. § 1915(a). However, the court has broad discretion in
25 denying an application to proceed *in forma pauperis*. Weller v. Dickson, 314 F.2d 598 (9th Cir. 1963),
26 *cert. denied*, 375 U.S. 845 (1963).

27 Several district courts have ruled that denial of *in forma pauperis* status is not unreasonable when a
28 prisoner is able to pay the initial expenses required to commence a lawsuit. *See Temple v. Ellerthorpe*, 586

1 F.Supp. 848 (D.R.I. 1984); Braden v. Estelle, 428 F.Supp. 595 (S.D.Tex. 1977); U.S. ex rel. Irons v.
 2 Com. of Pa., 407 F.Supp. 746 (M.D.Pa. 1976); Shimabuku v. Britton, 357 F.Supp. 825 (D.Kan. 1973),
 3 *aff'd*, 503 F.2d 38 (10th Cir. 1974); Ward v. Werner, 61 F.R.D. 639 (M.D.Pa. 1974).

4 By requesting the court to proceed *in forma pauperis*, petitioner is asking the government to incur
 5 the filing fee because he allegedly is unable to afford the costs necessary to proceed with his petition for
 6 *habeas corpus*. Petitioner states in his *in forma pauperis* application that he is currently employed, with
 7 "gross" wages of \$60.00 per month and "net" wages of \$55.00 per month. In addition, the latest entry on
 8 the prison trust account statement petitioner submitted with his application indicates a current balance of
 9 \$22.67 as of February 15, 2006. While the undersigned recognizes that the funds to which petitioner has
 10 access may not be great, given the fact that a prisoner's basic needs are provided for while incarcerated and
 11 the minimal filing fee required to proceed with this action (\$5.00), it is not unreasonable to expect
 12 petitioner to pay that fee from those funds.

13 CONCLUSION

14 Because it is reasonable to expect petitioner to incur the costs to proceed with his petition, the
 15 undersigned recommends that the court deny his application to proceed *in forma pauperis*. Accordingly,
 16 the undersigned also recommends that the court order petitioner to pay the required filing fee **within**
 17 **thirty (30) days** of the court's order.

18 Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 72(b),
 19 the parties shall have ten (10) days from service of this Report and Recommendation to file written
 20 objections thereto. See also Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those
 21 objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit
 22 imposed by Fed. R. Civ. P. 72(b), the clerk is directed set this matter for consideration on **May 5, 2006**, as
 23 noted in the caption.

24 Dated this 10th day of April, 2006.

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Karen L. Strombom
 United States Magistrate Judge